

**UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

COMMITTEE TO PRESERVE THE)	
RELIGIOUS RIGHT TO ORGANIZE and)	
HOBBY LOBBY STORES, INC.,)	
Petitioners, Cross-Respondent,)	Nos. 16-2297, 16-3162, 16-3271
)	
v.)	
)	
NATIONAL LABOR RELATIONS BOARD,)	
Respondent, Cross-Petitioner.)	

STATEMENT OF POSITION OF HOBBY LOBBY, INC.

Hobby Lobby Stores, Inc. (“Hobby Lobby”), by counsel, respectfully submits its statement of position setting forth its recommended disposition of this appeal in light of the Supreme Court’s decision in *Epic Sys. Corp. v. Lewis*, 138 S. Ct. 1612 (2018). Hobby Lobby respectfully proposes as follows:

1. The Court should grant Hobby Lobby’s petition for review and deny the National Labor Relations Board’s (“Board’s”) cross-application for enforcement with respect to the Board’s finding that Hobby Lobby unlawfully maintained and enforced its Mutual Arbitration Agreement (“MAA”). The Board’s finding is not enforceable under *Epic Systems*.

2. The Board argues that the Court should remand to the Board the questions whether Hobby Lobby failed to demonstrate that the MAA affects commerce within the meaning of the Federal Arbitration Act (“FAA”) and whether Hobby Lobby’s truck drivers are exempt from the FAA. Position Statement of the National Labor Relations Board (“Board Statement”) at 7. However, those questions about the FAA’s application and scope are irrelevant here under *Epic Systems*,

which found that the National Labor Relations Act (“NLRA”) simply does not provide covered employees a nonwaivable right to invoke class, collective, or joinder procedures in arbitration. 138 S.Ct. at 1623-1630. In short, even if the FAA did not apply to all of Hobby Lobby’s NLRA-covered employees, those employees would nevertheless lack any nonwaivable right to class, collective, and joinder procedures under the NLRA pursuant to *Epic Systems*. Accordingly, the remand of these two FAA-related questions as proposed by the Board would be futile and should be rejected.

3. In its decision, the Board also found that Hobby Lobby’s MAA interfered with employees’ right to file charges with the Board because they might misconstrue the MAA as prohibiting such charges. Hobby Lobby agrees with the Board that this question should be remanded to the Board for reconsideration. Board Statement at 8.

4. Finally, Hobby Lobby agrees with the Board’s position that the petition for review filed by the Committee to Preserve the Religious Right to Organize (“Committee”) should be dismissed or denied because the petition is without basis absent any unfair labor practice violation and the Committee lacks standing. Board Statement at 8-9. Hobby Lobby further notes that in its decision, the Board expressly found that the Committee’s position lacked merit and raised “substantive arguments that are wholly outside the scope of the General Counsel’s complaint.” JA277 n2.

Respectfully submitted

s/Christopher C. Murray

Christopher C. Murray

Ogletree, Deakins, Nash, Smoak &
Stewart, P.C.

111 Monument Circle, Suite 4600

Indianapolis, IN 46204

Phone: 317-916-1300

Facsimile: 317-916-9076

christopher.murray@ogletreedeakins.com

Ron Chapman, Jr.

Ogletree, Deakins, Nash, Smoak &
Stewart, P.C.

8117 Preston Road, Suite 500

Dallas, TX 75225

Phone: 214-36-9216

Facsimile: 214-987-3927

ron.chapman@ogletreedeakins.com

CERTIFICATE OF SERVICE

I hereby certify that on June 19, 2018, I electronically filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system. I certify that the foregoing document will be served via the CM/ECF system on the following counsel, who is a registered CM/ECF user.

Valerie L. Collins, Attorney
National Labor Relations Board
Region 20
901 Market Street, Suite 400
San Francisco, CA 94103

Linda Dreeben, Attorney
National Labor Relations Board
Office of the General Counsel
1015 Half Street, S.E., Room 8101
Washington, DC 20570-0000

Joseph F. Frankl, Attorney
National Labor Relations Board
Region 20
901 Market Street, Suite 400
San Francisco, CA 94103

Elizabeth A. Heaney, Attorney
National Labor Relations Board
Office of General Counsel
1015 Half Street, S.E.
Washington, DC 20570-0000

Yasmin Macariola, Attorney
National Labor Relations Board
Region 20, Suite 400
901 Market Street
San Francisco, CA 94103

David A. Rosenfeld, Esq.
Weinberg, Roger & Rosenfeld
A Professional Corporation
1001 Marina Village Parkway, Suite 200
Alameda, CA 94501-6430

s/Christopher C. Murray
Christopher C. Murray
Ogletree, Deakins, Nash, Smoak & Stewart,
P.C.
111 Monument Circle, Suite 4600
Indianapolis, IN 46204
Phone: 317-916-1300
Facsimile: 317-916-9076
christopher.murray@ogletreedeakins.com

34459958.2